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No. 92-1862

In The

Supreme Court of the United States

October Term, 1993

B. C., JR.,

Petitioner,

vs.

STATE OF LOUISIANA,

Respondent.

On Petition For Writ Of Certiorari
To The Louisiana Court Of Appeal
For The Third Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

May a state juvenile court impose upon a disabled student who has been adjudicated as a child in need of supervision a condition of probation that he receive homebound instruction notwithstanding the federal Individuals with Disabilities Education Act (IDEA)?

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STATEMENT OF THE CASE

On September 18, 1991, the District Attorney for the Parish of Grant, State of Louisiana, filed a petition with the Thirty-Fifth Judicial District juvenile court requesting that petitioner, B.C., Jr., date of birth 10-20-78, be declared a child in need of supervision under Louisiana Code of Juvenile Procedure article (La.C.J.P. art.) 25 *et seq.* (now repealed) [current version at Louisiana Children's Code article (La.Ch.C. art.) 792 *et seq.* (effective January 1, 1992)]. (R. 1-3, 134). The State of Louisiana alleged that petitioner, who is classified as a disabled student entitled

to special education services under the federal Individuals with Disabilities Education Act (IDEA) (formerly The Education of the Handicapped Act, "EHA"), 20 U.S.C. § 1400 *et seq.* while enrolled in a Grant Parish public school, engaged in continuous, long-term disruptions at school, including fighting and committing batteries on classmates. (R. 1, 8-17, 18-23, 24, 25-31). A female classmate complained that petitioner intentionally pushed her on many occasions, one time injuring her by running her over and pushing her into a pole. (R. 9, 12, 25-31). Petitioner was further accused of threatening to beat up another student if that student did not relinquish his lunch money. (R. 9, 12, 17, 18-23). Upon refusal to relinquish his money, that student was choked by petitioner, and a teacher had to physically restrain the petitioner. (R. 9, 10, 12, 14, 17, 18-23). Subsequent to that incident, petitioner was accused of coercing a third student into using a pencil to stab the student who had refused to relinquish his lunch money. (R. 15, 17, 18-23). That student was stabbed in the stomach with a sharpened pencil; the point of the pencil went through the student's shirt and broke off into his skin. (R. 15, 18-23). The petitioner threatened to beat up the third student if that student did not do as instructed. (R. 13, 17, 18-23).

At a hearing to answer the petition on September 25, 1991, petitioner was appointed counsel. (R. 39, 134). An adjudication hearing was subsequently conducted on October 2, 1991. (R. 134). At that hearing, numerous letters from teachers were entered into the record which supported a finding that, for some time, petitioner had displayed a lack of respect for authority and had exhibited abusive behavior toward others. (R. 9-16). Pursuant

to a plea bargain agreement and with the advice of counsel, petitioner admitted guilt as to the District Attorney's petition. (R. 39, 134). In exchange for the guilty plea, the District Attorney declined to file a petition requesting the adjudication of the petitioner as a delinquent for the charges of extortion and simple battery. (R. 8, 17, 24, 39; R. App. 3). The juvenile court ruled that petitioner was a child in need of supervision and thereby ordered a predispositional investigation and psychological evaluation, returnable to the court by October 30, 1991. (R. 34, 38, 124, 134).

On October 11, 1991, a lawyer for The Advocacy Center for the Elderly & Disabled of Shreveport, Louisiana, enrolled as counsel on petitioner's behalf, replacing the petitioner's court-appointed attorney. (R. 32-33). On October 18, 1991, petitioner submitted a Motion to Modify or Rescind Order requiring homebound instruction as a condition of probation and subsequently filed a memorandum in support of that motion. (R. 35, 45-50). In the motion and memorandum, petitioner's counsel alleged that the petitioner's mother and school officials held a team meeting on October 11, 1991, and that they had agreed that petitioner should return to school with a full-time teacher's aide assigned to control his behavior. (R. 35-36, 47-48, 85-89, 90-92).

On October 18, 1991, the predispositional investigation and psychological evaluation were submitted to the juvenile court. (R. 38-44). The predispositional report recommended supervised probation with the Louisiana Department of Public Safety and Corrections until petitioner reached his 17th birthday, with special conditions of probation including continued participation in the

Child and Adolescent Service System Program at an area mental health clinic and homebound instruction as provided by the Grant Parish School District. (R. 41).

The psychologist's report in response to the juvenile court's order indicated that petitioner had a borderline range of intelligence and that he suffered from "an oppositional defiant disorder" which had progressed into "a conduct disorder, solitary aggressive type." (R. 44). The psychologist recommended a continuation of mental health counseling and noted that "consideration for possible medication will be almost essential if he is to remain in the public school system and stay out of more serious delinquent activity." (R. 44). A previous psychiatric report dated August 28, 1991, indicated that petitioner exhibited "a conduct disorder, aggressive type, solitary" and another psychiatric evaluation on November 29, 1991, revealed that the petitioner exhibited an "oppositional defiant disorder" as well as "mild chronic depression." (R. 105-106).

Pursuant to the petitioner's motion to rescind or modify the juvenile court's order, a hearing was held on November 11, 1991, wherein testimony was presented and counsel agreed to submit the remainder of the matter on briefs. (R. 37, 45-50, 118, 125, 133; R. App. 17-18). Ollie Goudeau, the supervisor of special education for the Grant Parish School District, testified that the school's IEP plan would place the petitioner in a "behavior disordered classroom for 275 minutes a day, five days a week . . . ; [would] provide [petitioner] with a child specific aid (sic). . . . [H]e would be in total isolation on

school campus in a room with this person and not mingling with any other students." (R. App. 9, 10). Subsequent to the hearing, the juvenile court ordered that the petitioner be placed on supervised probation with the Louisiana Department of Public Safety and Corrections until his 17th birthday on October 20, 1995. (R. 124, 129, R. App. 3-19). A condition of probation was that petitioner was to continue "home bound (sic) instructions provided by the Grant Parish School Board." (R. 124, 129-130).

Petitioner's counsel submitted on April 30, 1992, another motion contesting the juvenile court's order. (R. 90-92).

On June 3, 1992, another hearing was conducted after which the juvenile court again ruled petitioner a child in need of supervision and placed him on probation, a special condition of which was that the petitioner be given homebound instruction by the appropriate educational agency pending further orders of the Court. (R. 124, 133).

Petitioner appealed the juvenile court's ruling to the Louisiana Court of Appeal, Third Circuit. (R. 126, 130-131, 133). The Third Circuit in *State In the Interest of B.C., Jr.*, Docket No. CR92-826 (La. Ct. App. 3d Cir. December 9, 1992), upheld the juvenile court's ruling based upon the juvenile's past physical aggression toward classmates and teachers. Further, the appellate court found that the juvenile court's ruling as required by Louisiana law was in the best interest of the petitioner and the public. *See* Petitioner's Brief, Appendix at A-1) (hereinafter Pet.'s Brief, App. at ___). The Louisiana Supreme Court declined to review the Third Circuit's

ruling by a 6-1 vote. *See State In the Interest of B.C., Jr.*, 613 So. 2d 976 (La. 1993). *See also* Pet.'s Brief, App. at A-22.

From the denial of certiorari by the Louisiana Supreme Court, petitioner now files the instant application for writ of certiorari with this Honorable Court. The only issue in the application before this Court is whether the state juvenile court ruling violated the federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*

SUMMARY OF THE ARGUMENT

In opposing the petitioner's application for writ of certiorari to this Honorable Court, the State of Louisiana argues that there is no valid federal claim upon which a writ should issue. The State of Louisiana contends that IDEA on its face does not purport to limit the authority of a state juvenile court as it pertains to the conditions of probation imposed upon a juvenile who has been adjudicated a child in need of supervision under state law. Further, this Honorable Court in *Honig v. Doe*, 484 U.S. 305 (1988), recognized that the federal statute does nothing to restrain the powers of the judiciary. For these reasons, the State of Louisiana requests that petitioner's application for writ of certiorari be denied.

ARGUMENT

I. A state juvenile court may adjudicate a disabled adolescent as a child in need of supervision and, thereby, as a condition of probation, impose an order of homebound instruction without offending the federal Individuals with Disabilities Education Act (IDEA).

A. A plain reading of IDEA supports a finding that the statute was not designed to limit the authority of a state court.

The State of Louisiana respectfully argues that IDEA imposes no constraints upon a state juvenile court in that Congress passed that statute as a means to regulate state educational agencies and not state courts. *See Honig v. Doe*, 484 U.S. 307 (1988), discussed *infra*. The State recognizes as well that as a condition of receiving federal monies, IDEA requires states to provide children with disabilities a "free appropriate public education," with the statutory term "appropriate" meaning that the child obtains some degree of benefit from the free education. *See* 20 U.S.C. §§ 1400(c) and 1412(1). *See also Teague Independent School District v. Todd L.*, 999 F. 2d 127, 128 (5th Cir. 1993), and *Board of Education v. Rowley*, 458 U.S. 176, 200 (1982). Most importantly, Congress' intent behind this federal law, as this Court recognized in *Rowley* and *Honig* while addressing IDEA's predecessor statute EHA, was "to bring previously excluded handicapped children into the public education systems of the States and to require the States to adopt **procedures** which would result in individualized consideration of and instruction for each student." *Rowley*, 458 U.S. at 189 (emphasis in original). *See also Todd L.*, 999 F. 2d at 129, n. 4 (federal statute

"prohibits schools which receive federal funds from discriminating against disabled children"). In fact, this Court in *Honig* noted that, at the time that this federal legislation was passed, eight million disabled children in the U.S. were not receiving appropriate educational services. *Honig*, 484 U.S. at 309. As the Fifth Circuit stated in *Todd L.*, "IDEA was intended to redress a long history of discrimination by public schools against disabled children. Isolation of a schoolchild or reduction of the quality or amount of a child's educational programming solely for the convenience of staff violates IDEA." *Id.*

An examination of IDEA itself supports a finding that Congress never intended that the statute control a state juvenile court which is completely separate and apart from a state educational agency. In fact, 20 U.S.C. § 1415, which provides for mandatory procedural safeguards, speaks in terms of "[a]ny State educational agency" or sub-agency and provides safeguards for any actions by that agency against disabled children and their parents or guardians. The statute stresses the necessity of meaningful parental participation and provides parents with an avenue for appealing adverse decisions they find inappropriate. In particular, once the administrative procedures of IDEA are triggered, the aggrieved party is required by § 1415(e) to bring a civil action in either state or federal court. The statute itself clearly provides that a court reviewing the action of a state educational agency can thereby "**grant such relief as the court determines is appropriate**." (Emphasis added). As *Todd L.*, *supra*, illustrates, a court is empowered to reach an independent finding after *de novo* review. In contrast to what the

petitioner here claims,[1] the State contends that Congress intended to create an enforceable substantive right to a public education for the disabled child and his or her parents, but IDEA's statutory procedures govern only a state educational agency or its subsidiary.

Accordingly, the State of Louisiana would argue that a plain reading of IDEA supports a finding that Congress clearly had no intent to limit the judicial authority of a court, either state or federal, to review a matter that falls directly within the ambit of the statute's administrative procedure. Given that finding, the obvious conclusion is that Congress clearly had no intent to limit the judicial authority of a court acting totally independently of that statute's administrative procedure.

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[1] Petitioner cites *In Re Tony McCann*, 17 E.H.L.R. 551 (Tenn. Ct. App. 1990), as authority for its argument that the state juvenile court in this case exceeded its authority by ordering homebound instruction as a condition of probation for a child receiving special education services pursuant to IDEA. (R. 81-84). The State would counter that the *McCann* decision addressed action by the school officials themselves, and not law enforcement officials acting outside the realm of the educational process. In that case, it was the school officials who failed to follow IDEA's procedural safeguards, by filing a petition in juvenile court seeking to have the child judicially declared as "unruly." *McCann* at 552-553. The Tennessee appellate court held that the school officials had violated IDEA by not following the federal procedures, which included a failure to give the petitioner's mother adequate notice. The *McCann* decision is clearly not applicable to the instant case where the District Attorney, wholly unconnected to the educational system, files a petition seeking to adjudicate a juvenile as a child in need of supervision. Moreover, *McCann* involved a state statute that made IDEA procedures controlling, which is not the case in Louisiana.

B. *Honig v. Doe*, 484 U.S. 305 (1988), recognizes that the federal statute operates separate and apart from the state judicial system.

In *Honig*, this Court held that IDEA's predecessor, EHA, did not limit the equitable powers of a state court from temporarily enjoining a dangerous disabled child from attending schools even though the unilateral exclusion by the school itself for a period greater than 10 days did violate the federal act. This Court further found that the "stay-put" provision of the federal statute, which prohibits school officials from unilaterally changing a child's placement over the parents' objection during the pending administrative and judicial review of the school's placement decision, did not limit or pre-empt a court's authority over determining the proper course of action regarding such a child.[2] *See* 20 U.S.C. § 1415(e)(3). In this case, the action of the juvenile court was clearly

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[2] Louisiana law defines a "child in need of supervision" as inclusive of the following: "a child who needs care or rehabilitation because . . . (a) Being subject to compulsory school attendance, he is habitually truant from school or willfully violates the rules of the school. (b) He habitually disobeys the reasonable and lawful demands of his parents, and is ungovernable and beyond their control. . . . (e) His occupation, conduct, environment, or associations are injurious to his welfare." *See* La.C.J.P. art. 13(a), (b) and (e) (now repealed) [current version at La.Ch.C. art. 791.1(1), (2) and (5) (effective January 1, 1992)]. Further, under Louisiana law, a state court exercising juvenile jurisdiction "shall have exclusive original jurisdiction over a proceeding in which a child is alleged to be in need of supervision." *See* La.C.J.P. arts. 15 and 16 (now repealed) [current version at La.Ch.C. art. 791.2 (effective January 1, 1992)].

authorized by Louisiana law[3] and is not prohibited by IDEA. In light of *Honig*, the State of Louisiana argues that the authority of a juvenile court remains unchanged and unfettered under IDEA.

At issue in *Honig* was whether the statutory "stay-put" proscription directed at school officials extended to disabled children who, due to their disabilities, exhibited dangerous and disruptive behavior in the classroom. In addition, this Court addressed the issue of whether a district court, acting under its equitable powers, could directly order continued educational services for a disabled child who was considered dangerous and disruptive, when the local school agency had unilaterally expelled that child during the pendency of administrative and judicial review.

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[3] La.C.J.P. arts. 25 through 94 (now repealed) provided the judicial process governing the adjudication of a child in need of supervision at the time the juvenile court petition in this case was filed. [Current version at La.Ch.C. arts. 792 *et seq.* (effective January 1, 1992)]. The State is required to prove the allegations in the petition requesting that the child be adjudicated a child in need of supervision by a preponderance of the evidence. *See* La.C.J.P. art. 73 (now repealed) [current version at La.Ch.C. art. 792.43 (effective January 1, 1992)]. Once a court adjudicates a child as a child in need of supervision, the court then is required to order a predispositional investigation and report, and hold a disposition hearing. *See* La.C.J.P. arts. 76, 78-81, and La. R.S. 13:1583 (now repealed) [current version at La.Ch.C. arts. 792.46, 792.48-51 (effective January 1, 1992)]. Under Louisiana law, a court in rendering its disposition order may " . . . [p]lace the child on probation on such terms and conditions as deemed in the best interest of the child and the public . . . " *See* La.C.J.P. arts. 84, 86 and La.R.S. 13:1583 (now repealed) [current version at La.Ch.C. arts. 792.53 and 792.54 (effective January 1, 1992)].

In *Honig*, this Court found that the stay-put provision was "unequivocal" as it plainly required that a state educational agency could not change, without the parents' consent, a disabled child's placement during the pendency of administrative review even though the child was admittedly dangerous. This Court flatly declined to write a "dangerousness exception" into the federal statute. This Court stated that "we can only conclude that the omission [of a dangerousness exception to the stay-put provision] was intentional; we are therefore not at liberty to engraft onto the statute an exception Congress chose not to create." *Honig*, 484 U.S. at 323 and 325.[4]

By the same token, petitioner in this application for certiorari is attempting to persuade this Honorable Court to rewrite IDEA so as to remove the authority of a state court which operates totally independently of the state educational system. The State urges this Court, as it did in *Honig*, to once again decline that invitation. This Court in *Honig* recognized the independence of the judicial system from IDEA's procedural safeguards by advising school officials that in cases where a disabled child was

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[4] The 5-2 majority opinion in *Honig* clearly drew a distinction between the authority of school officials as opposed to the authority of the judicial system. Justice Brennan, author of the opinion, wrote: "We think it clear, however, that Congress very much meant to strip schools of the *unilateral* authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school. In so doing, Congress did not leave school administrators powerless to deal with dangerous students; . . . [it] directed that in the future the removal of disabled students could be accomplished only with the permission of the parents or, as a last resort, the courts." *Id.* at 323-324.

dangerous, those officials could impose the maximum 10-day suspension as authorized by IDEA and "the 10-day respite gives school officials an opportunity to invoke the aid of the courts under § 1415(e)(2), which empowers courts to grant any appropriate relief." *Id.* at 326. This Court stated that school officials would not have to exhaust administrative remedies prior to seeking judicial review under exigent circumstances. This Court also wrote:

> [The federal statute does not] limit the equitable powers of district courts such that they cannot, in appropriate cases, temporarily enjoin a dangerous disabled child from attending school. As the EHA's [now IDEA's] legislative history makes clear, one of the evils Congress sought to remedy was the unilateral exclusion of disabled children by *schools*, not courts, and one of the purposes of § 1415(e)(3), therefore, was 'to prevent *school* officials from removing a child from the regular public school classroom over the parents' objection pending completion of the review proceedings.' The stay-put provision in no way purports to limit or pre-empt the authority conferred on courts by § 1415(e)(2) . . . ; indeed, it says nothing whatever about judicial power.

Id. at 327 (emphasis in original; citations omitted).

The State's primary argument that IDEA places no constraint upon judicial power is based both upon the unequivocal language of IDEA and its predecessor, EHA, and upon this Court's interpretation of that federal statute in *Honig*. The State adamantly argues that if Congress did not attempt to limit judicial power as it relates

directly to the statute's administrative review process as this Court clearly found in *Honig*, then the petitioner's argument that IDEA regulates judicial power independent of that review process is patently wrong.

II. In ruling that homebound instruction was in the best interest of the petitioner and the public, the juvenile court afforded the petitioner all the due process protections incorporated in IDEA.

A. Petitioner's argument that the juvenile court failed to follow the official individualized education program (IEP) recommendations is of no merit.

The United States Court of Appeals, Fifth Circuit, in *Todd L., supra*, ruled that, although a district court is required to pay deference to recommendations of an educational agency by giving that decision "due weight," those findings are not conclusive and the district court is free to take additional evidence and reach an independent conclusion supported by a preponderance of the evidence. *Id.* at 131. In the instant case, petitioner claims that the school agency's IEP recommended that petitioner remain in his present school and that the juvenile court's order for homebound instruction is directly contrary to this recommendation. First, the State would counter that the record supports a finding that homebound instruction is compatible with the IEP recommendations.[5] Second,

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[5] Petitioner's motion to rescind or modify the juvenile court's order for homebound instruction contends that the petitioner's parent and school officials agreed that the petitioner

the State would argue that contrary to petitioner's argument that the juvenile court was bound to follow the IEP recommendations, the Fifth Circuit in *Todd L.* found that IDEA did not restrict a court's authority to independently review the local school's IEP and, thereby, find that an alternative placement was the appropriate placement. In fact, IDEA provides that a court reviewing an agency's decision "shall receive the records of the administrative proceedings, shall hear additional evidence, **shall grant such relief as the court determines is appropriate**." 20 U.S.C. § 1415(e)(2) (emphasis added). The Fifth Circuit found that IDEA "does not state that the district court must defer to those findings when its own review of the evidence indicates that the hearing officer erroneously assessed the facts or erroneously applied the law to the facts." *Todd L.*, 999 F. 2d at 131.

This Court in *Rowley, supra,* noted:

> Congress expressly rejected provisions that would have . . . severely restricted the role of reviewing courts. . . . [T]he [Congressional] Conference Committee explained that courts were to

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should remain in school with a "full-time aide assigned to control his behavior and a restricted classroom setting." (R. 35). The IEP dated October 11, 1991, indicates the following: "IEP cannot be put into place; pending further orders of juvenile court"; that petitioner "is difficult to impossible to manage [in] a regular classroom environment"; that he "unfortunately, due to his nearly nonexistent social skills, he is unable to function well or excell (sic) in a school setting"; that petitioner's "current behavior [is] totally inappropriate and not conducive to learning. His abusive actions impairs (sic) the learning of other students in the classroom." (R. 85, 86, 87, 89).

> make 'independent decision[s] based on a preponderance of the evidence.'

458 U.S. at 205, *quoting* S.Cong.Rec. 37416 (1975) (remarks of Sen. Williams).

The Fifth Circuit has further noted that a district court should independently review the appropriateness of an IEP *de novo* and that such review provides procedural due process protection for the rights of disabled children. *See Christopher M. v. Corpus Christi Independent School District*, 933 F. 2d 1285, 1289 (5th Cir. 1991) and *Daniel R.R. v. State Board of Education*, 874 F. 2d 1036, 1040 (5th Cir. 1989). The Fifth Circuit also found that the district court's findings will be reviewed *de novo* by the higher court as a mixed question of law and fact and that the district court's factual findings will be reviewed for "clear error." *Todd L.*, 999 F. 2d at 131.

In this case, under the reasoning of *Todd L.*, a juvenile court acting outside the administrative review process outlined by IDEA clearly has authority to determine what is in "the best interest of the child and the public" as required by Louisiana law. *See* La.C.J.P. arts. 84, 86 and La.R.S. 13:1583 (now repealed) [current version at La.Ch.C. arts. 792.53 and 792.54 (effective January 1, 1992)]. Unless the juvenile court's ruling is "clearly erroneous" and not supported by a preponderance of the evidence, petitioner is entitled to no relief. *See Sherri A.D. v. Kirby*, 975 F. 2d 193, 207 (5th Cir. 1992). For these reasons, petitioner's claim that the juvenile court violated IDEA by not following the IEP recommendation has no merit.

B. The juvenile court afforded petitioner a panoply of due process protections.

IDEA's procedural safeguards, as outlined by 20 U.S.C. § 1415, include the parents' right to examine all relevant documents regarding the decision-making process behind their child's educational placement; the right to prior written notice for any contemplated change or a refusal to initiate a proposed change in the educational placement; an opportunity to present complaints; and "an impartial due process hearing" in response to those complaints. *See* 20 U.S.C. § 1415(b)(1) and (2). Encompassed within these protections is the right to counsel. *See* 20 U.S.C. § 1415(d)(1). Moreover, IDEA provides the aggrieved party with the right to present evidence, confront and cross-examine witnesses, and subpoena witnesses. Finally, that party is entitled to a hearing transcript and written findings of fact and decisions. *See* 20 U.S.C. § 1415(d)(2), (3) and (4). At the conclusion of the administrative hearing process, either parents or the agency may file a civil action in any state or federal court under §§ 1415(c) and (e)(2). As noted above, the court is empowered to consider additional evidence, review the previous findings, and make a finding it considers appropriate. *See* § 1415(e)(2).

The procedural protections as outlined above are the exact procedural protections that were afforded to the petitioner in this case. Therefore, there can be no claim that the petitioner was unconstitutionally denied his right to due process under the law.

CONCLUSION

Based upon the foregoing reasons, the State of Louisiana would respectfully request that this Honorable Court deny the petitioner's application for writ of certiorari to review the judgment of the Louisiana Court of Appeal, Third Circuit.

Respectfully submitted,

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